**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**
**AND**
**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**Writ Appeal No.281 of 2007**

**Between:**

C. Veerappa

... Appellant

**And**

The Chief Commissioner,
Land Administration, Hyderabad & another.

... Respondents

**:: J U D G M E N T ::**

Counsel for the appellant : Sri Srinivas Basava
for Sri B.V.V.S.Murthy

**7th June, 2007**

**Per G.S. Singhvi, C.J.**

Whether the notice issued by Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (respondent No.2) under Section 8(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act') can be treated to have been duly served on the appellant is the question which arises for determination in this appeal filed by him against order dated 13-10-2006 passed by the learned

Single Judge in Writ Petition No.20812 of 2006.

The appellant owned various parcels of land in Survey Nos.55, 56, 58, 59, 60 and 76 of Kothapet Village, Uppal Mandal, Ranga Reddy District. On 15-9-1976, he filed declaration under Section 6 of the Act. After due enquiry, respondent No.2 issued draft statement on 25-11-1993 and sent the same to the appellant along with notice under Section 8(3) of the Act so as to enable the latter to submit objections. The notice was sent by registered post acknowledgement due and was duly received on 13-12-1993. However, no objection was filed within the stipulated time of 30 days. Therefore, vide order dated 30-4-1994, respondent No.2 finalised the proceedings under Section 8(4) and issued final declaration.

The appellant challenged the aforementioned order by filing an appeal under Section 33 of the Act. He pleaded that the notice issued under Section 8(3) had not been received by him and the report of service was false. The Commissioner (ROM), in the office of Chief Commissioner, Land Administration, Andhra Pradesh (hereinafter referred to as 'the appellate authority'), after going through the records, held that the notice issued under Section 8 has been duly served and dismissed the appeal vide his order dated 4-4-2006.

The learned Single Judge confirmed the finding recorded by the appellate authority and dismissed Writ Petition No.20812 of 2006 filed by the appellant for quashing order dated 4-4-2006. The learned Single Judge, after going through File No.J2/1136/76, which was summoned by him in the context of the argument made by the learned counsel for the appellant that notice under Section 8(3) had not been served on his client, observed as under:

> "……..The petitioner filed the declaration under Section 6 of the Act on 15-9-1976. The same was referred for enquiry to the Special Deputy Tahsildar, who issued number of notices to the petitioner. Some of these notices were sent to the petitioner at his address "3-2-801" as furnished by him in column-1 of Para-B of the declaration under Section 6 of the Act. These notices were received by the petitioner, but he did

not produce documentary evidence. Therefore, on 24-6-1993, the Enquiry Officer submitted a report to the second respondent. Based on the report, the second respondent issued a draft statement on 25-11-1993 and notice under Section 8(3) of the Act calling upon the petitioner to submit objections. As noticed above, the benefit of G.O.Ms.No.733 was given besides allowing 1,000 Sq.mts. towards ceiling area. The said notice was sent by Registered post with Acknowledgement due again to the address of the petitioner as furnished in the declaration. The acknowledgement was signed by one C. Pavularam Yadav on 13-12-1993 and was seen on index page No.79. As objections were not received, second respondent passed final orders on 30-4-1994 determining the petitioner to be surplus vacant landholder to the extent of 20,954.07 Sq.mts."

The learned Single Judge then considered the appellant's plea that signing of acknowledgement by one C. Pavularam Yadav cannot be treated as service of notice on him and rejected the same by assigning the following reasons:

"…….Section 8(3) of the Act requires the Competent Authority to serve draft statement in such manner as may be prescribed on the person together with the notice calling upon for objection. The term "prescribed" means prescribed by the Rules (see Section 2(j) of the Act). The Central Government has made Urban Land (Ceiling and Regulation) Rules, 1976 (the Rules' for brevity) in exercise of their powers under Section 46(1) and (2) of the Act. Rule 5(2) of the Rules deals with service of notice and reads as under.

**5. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same:-**

(2) (a) The draft statement shall be served together with the notice referred to in sub- section (3) of section 8, on-

(i) the holder of the vacant lands, and

(ii) all other persons, so far as may be known, who have, or are likely to have, any claim to, or interest in the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned-

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance of sub-section (1) of section 6, and

(ii) in the case of other persons at their last known addresses.

(b) Where the draft statement and the notice are returned as refused by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, any other person referred to in clause (a), in the manner specified in that clause is not successful for reasons other than the reason referred to in clause (b), the draft statement and notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

A plain reading of the above Rules would show that when once the notice is sent by Registered Post to the person/declarant or other person claiming interest or ownership, it would be sufficient compliance with Section 8(3) of the Act. Rule 5(2)(c) of the Rules also speaks of serving the draft statement by affixing copies of the same in a conspicuous place in the office of the competent authority. Furthermore, under Section 27 of the General Clauses Act, 1897, unless contrary is proved, due service of notice has to be presumed if the said notice is sent by Registered Post by preparing and posting the letter to the address of the person to whom notice is to be sent. In this case, as seen from the tile, a number of notices issued by the Enquiry Officer/Special Deputy Tahsildar at the time of the enquiry were sent to the address of the petitioner as furnished in the declaration. The draft statement under Section 8(1) of the Act and notice under Section 8(3) of the Act were also sent to the same address by Registered Post with Acknowledgement Due and, therefore, even if the postal acknowledgement is signed by other person, this Court has to infer that there is valid service of notice as prescribed by the Rules, which is the mandate of Section 8(3) of the Act."

Sri Srinivasa Basava, learned counsel for the appellant reiterated the argument advanced before the learned Single Judge and submitted that the orders passed by respondent No.2 and the appellate authority are liable to be set aside because notice issued

under Section 8(3) was not served on his client. Learned counsel emphasised that C. Pavularam Yadav, who is said to have received the notice on 13-12-1993 is neither related to nor acquainted with the appellant and the learned Single Judge committed a serious error by invoking Rule 5(2) of the Urban Land (Ceiling and Regulation) Rules, 1976 (for short, 'the Rules') for treating the service of notice as proper. In support of his argument, the learned counsel relied on order dated 21-1-2000 passed by the Supreme Court in **State of U.P. v. Chhuttan and others**[1].

We have given serious thought to the arguments of the learned counsel, but have not felt convinced. Section 8(1) of the Act envisages preparation of draft statement showing the extent of vacant land held in excess of the ceiling limit by the person who files statement under Section 6(1). Sub-section (2) specifies the particulars required to be incorporated in the draft statement. Sub-section (3) lays down that the draft statement shall be served, in such manner as may be prescribed, on the person concerned together with a notice so as to enable him to prefer objections to the draft statement. Section 9 postulates preparation of final statement after disposal of the objections, if any filed by the person concerned. Rule 5(2) of the Rules also specifies the particulars to be incorporated in the draft statement and also prescribes the manner of service of the draft statement together with notice under Section 8(3). In terms of Rule 5(2)(a)(ii)(i), the notice is required to be sent to the holder of the vacant lands at the address given by him in the statement filed under Section 6(1). Clause (b) of Rule 5(2) lays down that if the draft statement and the notice are returned as refused by the addressee, then the same shall be deemed to have been duly served on such person. Clause (c) provides for the alternative mode of service by way of affixation.

Section 27 of the General Clauses Act, 1897 (for short, 'the 1897 Act'), which contains a deeming provision regarding service of notice by post, reads as under:

> "**27. Meaning of service by post.-** Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

A reading of Rule 5(2) of the Rules together with Section 27 of the 1897 Act makes it clear that if the notice is sent to the holder of the vacant land at his given address by registered post acknowledgement due, then the service thereof will be deemed to have been duly effected unless the contrary is proved by the addressee.

In **Harcharan Singh v. Shivrani**[2], a three Judges Bench of the Supreme Court interpreted Section 27 of the 1897 Act in the context of the provisions contained in U.P. Cantonments (Control of Rent and Eviction) Act, 1952 and held as under:

> "Section 27 of the General Clauses Act, 1897 deals with the topic— "Meaning of service by post" and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the

document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise……..”

In **K. Bhaskaran v. Sankaran Vaidhyan Balan**[3], the Supreme Court invoked Section 27 of the 1897 Act in the context of notice issued under Section 138 of the Negotiable Instruments Act, 1881 and held:

> “No doubt Section 138 of the Act does not require that the notice should be given only by “post”. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.”

In the present case, we find that the notices issued by Special Deputy Tahsildar, who was asked by respondent No.2 to make enquiry about the vacant land belonging to the appellant, were sent at the address furnished by him in column-1 of Para-B of the declaration and the same were received by him. The draft declaration prepared under Section 8(1) together with notice under Section 8(3) were also sent by registered post at the address furnished by the appellant. The acknowledgement was signed by one C. Pavularam Yadav.

Respondent No.2 treated the notice as duly served and issued the final declaration under Section 9. In the appeal preferred by him, the appellant did not plead that he does not know C. Pavularam Yadav. Even in the writ affidavit, the appellant did not aver that he does not know C. Pavularam Yadav. He also did not explain as to how C. Pavularam Yadav was present at the address given by him. Therefore, the notice issued under Section 8(3), which was sent to the appellant by registered post will be deemed to have been duly served.

In our opinion, the learned Single Judge rightly applied the deeming provision contained in Section 27 of the 1897 Act for treating the notice issued under Section 8(3) as duly served because the appellant failed to explain the presence of C. Pavularam Yadav at his address. The appellant could have rebutted the presumption of service by producing positive evidence to show that C. Pavularam Yadav has nothing to do with him. However, the fact of the matter is that the appellant did not even plead that he is not acquainted with C. Pavularam Yadav. If this is considered in conjunction with his failure to explain the presence of C. Pavularam Yadav at the address given by him, we do not see any reason to interfere with the discretion exercised by the learned Single Judge not to entertain the appellant's challenge to order dated 4-4-2006 passed by the appellate authority.

The judgment of the Supreme Court in **State of U.P. v. Chhuttan and others** (supra), on which reliance has been placed by the learned counsel for the appellant, has no bearing on this case. The brief facts incorporated in that judgment shows that the competent authority had recorded a finding that notice issued to the declarant under Section 8(3) was duly served on him on 27-3-1977. The appellate authority held that the notice was not properly served because it was not sent by registered post. The High Court took the same view. Their Lordships of the Supreme Court remanded the case to the competent authority by recording the following observations:

> "……The requirement of sending notice by registered post would arise when notice is tried to be served through post. In this case, the notice was served upon the wife of the holder by a Process Server. Whether that amounted to valid service of notice or not was not considered by the competent authority before recording the finding that it was served. As this aspect was not considered by the High Court and also by the authorities below, we set aside the impugned orders passed by them, remit the matter back to the competent authority for deciding the question of valid service of notice afresh after hearing the parties."

In the case before us, the notice was sent by registered post acknowledgement due, which was received by C. Pavularam Yadav, who was present at the address given by the appellant. Therefore, the judgment of the Supreme Court cannot be made basis for upsetting the order passed by the learned Single Judge and the one passed by the appellate authority.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP. No.538 of 2007 filed by the appellant for interim relief is also dismissed.

**G.S. SINGHVI, C.J.**

7th June, 2007.

**C.V. NAGARJUNA REDDY, J.**

Note: LR copy be marked.
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[1] JT 2000 (4) SC 240
[2] (1981) 2 SCC 535
[3] (1999) 7 SCC 510